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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

In re SAMANTHA G.,  
  
a Person Coming Under the Juvenile Court Law.

B257988  
(Los Angeles County  
Super. Ct. No. CK91626)

LOS ANGELES COUNTY DEPARTMENT  
OF CHILDREN AND FAMILY SERVICES,

Plaintiff and Respondent,

v.

ERNESTO G.,

Defendant and Appellant.

APPEAL from an order of the Superior Court of Los Angeles County,  
Rudolph A. Diaz, Judge. Affirmed.

Jesse McGowan, under appointment by the Court of Appeal, for Defendant  
and Appellant.

Mark J. Saladino, County Counsel, Dawyn R. Harrison, Assistant County  
Counsel, and Sarah Vesecky, Deputy County Counsel, for Plaintiff and  
Respondent.

Ernesto G. (Father) appeals from the juvenile court's order pursuant to Welfare and Institutions Code section 366.26<sup>1</sup> terminating his parental rights over his daughter Samantha G. and freeing her for adoption by a maternal aunt. He contends that the juvenile court abused its discretion in denying his request for a continuance because time was needed to determine whether Samantha's siblings would be adopted by a different maternal aunt. We find no abuse of discretion and therefore affirm the court's order.

## **FACTUAL AND PROCEDURAL BACKGROUND**

### *Detention*

Father and Elsa M. (Mother) have three children together: Alexis G. (born August 2005), Ernesto G. (born April 2008), and Samantha G. (born February 2011).<sup>2</sup> In December 2011, the Los Angeles County Department of Children and Family Services (DCFS) received reports that Father and Mother abused drugs, engaged in physical fights in front of the children, and physically abused the children. Mother had a 12-year history of methamphetamine abuse and admitted that she and Father had a violent relationship and that Father hit the children. When interviewed by the caseworker, both Alexis and Ernesto described being hit by Mother and Father. On January 26, 2012, DCFS detained the children from Mother and Father and placed them in foster care. At the January 31, 2012

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<sup>1</sup> All undesignated statutory references are to the Welfare and Institutions Code.

<sup>2</sup> Mother is not a party to this appeal, and Alexis and Ernesto are not subjects of this appeal. Mother has another child, Elisa M. (born October 2012), who is not a subject of this appeal and has a different father than Alexis, Ernesto, and Samantha. Elisa tested positive for methamphetamine at her birth and was removed from Mother's custody. Elisa subsequently was placed with maternal aunt Maribel M.

detention hearing, the juvenile court ordered DCFS to investigate placement with maternal relatives.

### *Pre-Release Investigation*

In February 2012, DCFS provided the court with three pre-release investigation reports regarding placement with maternal aunt Gabriela M., maternal aunt Beatriz C., and maternal aunt Maribel M. Gabriela reported a positive relationship with all three children and expressed a desire to have the children placed in her care or with a family member. Although her home was adequate and safe, DCFS reported that there were issues regarding space and sleeping arrangements. DCFS therefore recommended that the children remain in foster care until the home was approved under the Adoption and Safe Families Act (ASFA). Because Gabriela had two children of her own, ASFA approval was needed to allow three children to share a bedroom and to allow Gabriela and her husband to sleep in the living room. Beatriz's home similarly was found to lack space for the children.

Maribel reported that she loved all three children but was only willing to care for Samantha because she had two children of her own. Maribel's home was appropriate but required a space waiver.

### *Jurisdiction/Disposition*

The juvenile court conducted a combined jurisdiction/disposition hearing in August 2012. The court sustained the following allegations pursuant to section 300, subdivision (b): the parents had a history of violent altercations in the children's presence; Mother abused drugs and was under the influence of drugs while caring for the children; and Mother and Father inappropriately physically

disciplined Alexis and Ernesto. The court declared the children dependents of the court, removed them from the parents' custody, and ordered reunification services and monitored visits. The court also ordered drug and alcohol services, domestic violence counseling, and parent education for Mother and Father.

### *Reunification Period*

In an April 2013 status review report, DCFS reported that Alexis, Ernesto, and Samantha were residing with Gabriela and were doing well. Father had not participated in family reunification services and was not responding to DCFS's attempts to contact him. He did not provide documentation of participation in programs such as drug testing, domestic violence counseling, or individual counseling. Neither Father nor Mother visited the children regularly. Because Father and Mother had not demonstrated interest in reunifying with the children or complying with the court-ordered treatment plan, DCFS recommended that the court terminate reunification services and set a section 366.26 permanency hearing.

### *Section 366.26 Report and Hearing*

In June 2013, the juvenile court ordered reunification services terminated and scheduled a section 366.26 hearing to select a permanent plan for the three children. An October 2013 section 366.26 report indicated that all three children remained with Gabriela, whose home was ASFA approved. Father had not visited since March 2013. Gabriela and her husband were very close to the children, but particularly to Samantha, whom they considered as their own daughter.

Gabriela indicated she was willing to adopt Samantha, but not Alexis and Ernesto. DCFS therefore planned to transition Alexis and Ernesto into Maribel's home. Alexis and Ernesto felt comfortable about moving there, and Maribel and

her husband expressed the desire to adopt them. Alexis and Ernesto's adoption by Maribel would allow the sibling relationship among the three children to continue.

In January 2014, DCFS reported that the adoption home study for Gabriela and her husband had been approved in October 2013. However, Alexis and Ernesto could not be moved to Maribel's house because she lacked stable housing. DCFS therefore recommended that the section 366.26 hearing for Alexis and Ernesto be continued to allow Maribel's housing situation to stabilize. At a hearing on January 31, 2014, the juvenile court agreed to continue the section 366.26 hearing in order to allow time for Maribel's housing situation to stabilize and for a home study to be conducted.

As of May 2014, Alexis, Ernesto, and Samantha remained with Gabriela. Father was incarcerated and had not visited Samantha. Maribel wanted to adopt Alexis and Ernesto, but a home study could not be completed until she obtained ASFA approved housing. DCFS recommended continuing the section 366.26 hearing as to Alexis and Ernesto to allow completion of a home study for Maribel. Gabriela was willing to keep Alexis and Ernesto until Maribel obtained larger housing.

On May 30, 2014, the juvenile court conducted the section 366.26 hearing as to Samantha. Father appeared and requested a continuance. Father's counsel initially based the request on his mistaken belief that Samantha had been placed separately from Alexis and Ernesto. He stated that there was a paternal grandmother who was willing and able to take Alexis, Ernesto, and Samantha, a situation that he argued was in Samantha's best interest because she would remain with her siblings. After learning that the three children remained with Gabriela, counsel urged that a continuance was required because it was not certain that Alexis and Ernesto would be adopted by Maribel. Arguing that the sibling

exception to section 366.26 applied, counsel asked the court to continue the matter until the paternal grandmother could be evaluated or until it was clear that Maribel would be able to adopt Alexis and Ernesto. The court denied the request, noting that the paternal grandmother had not come forward in almost two-and-a-half years. The court therefore terminated parental rights, and declared Samantha free for adoption. The court continued the matter as to Alexis and Ernesto to September in order to complete Maribel's home study.

## DISCUSSION

Father contends that the court erred in not continuing the section 366.26 hearing to determine whether Maribel would adopt Samantha's siblings.<sup>3</sup> We disagree.

"Pursuant to section 352, the juvenile court may for good cause order a continuance of a dependency hearing. "Section 352 mandates that before the court can grant a continuance it must 'give substantial weight to a minor's need for prompt resolution of his or her custody status, the need to provide children with stable environments, and the damage to a minor of prolonged temporary placements.'" [Citation.] [¶] The juvenile court has broad discretion in determining whether to grant a continuance. [Citations.] As a reviewing court, we

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<sup>3</sup> "In order to obtain a continuance of a hearing, written notice shall be filed at least two court days prior to the date set for the hearing, 'unless the court for good cause entertains an oral motion for continuance.' (. . . § 352, subd. (a).) Moreover, the motion shall be served on the parties at least two court days before the date set for the hearing. (Cal. Rules of Court, rule 5.550(a)(4).)" (*In re B.C.* (2011) 192 Cal.App.4th 129, 144.) Father acknowledges that he did not comply with the requirement of written notice two days prior to the hearing date. DCFS contends that Father did not show good cause for the court to entertain his oral motion for a continuance. However, the juvenile court did not address whether Father had shown good cause to entertain the oral motion, instead addressing the motion on the merits. We therefore consider Father's argument.

can reverse an order denying a continuance ‘only upon a showing of an abuse of discretion.’ [Citation.]” (*In re V.V.* (2010) 188 Cal.App.4th 392, 399 (V.V.)) “A juvenile court abuses its discretion if its decision is arbitrary, capricious or patently absurd. [Citation.]” (*In re A.B.* (2014) 225 Cal.App.4th 1358, 1366.)

Father contends that the juvenile court should have continued the hearing to allow time to determine whether Maribel could adopt Alexis and Ernesto. His argument is that, if Maribel were not allowed to adopt Samantha’s siblings and a non-family member were to adopt them, Samantha would be separated from her siblings, and the sibling exception to the termination of parental rights would apply.

“At a [section 366].26 hearing, the court may order one of three alternative plans: (1) adoption (necessitating the termination of parental rights); (2) guardianship; or (3) long-term foster care. (§ 366.26, subd. (c)(1), (4)(A).) If the child is adoptable, there is a strong preference for adoption over the other alternatives. [Citation.] Once the court determines the child is adoptable . . . , a parent seeking a less restrictive plan has the burden of showing that the termination of parental rights would be detrimental under one of the exceptions listed in section 366.26, subdivision (c)(1)(B). [Citation.]” (*In re J.C.* (2014) 226 Cal.App.4th 503, 528.)

The sibling exception, found in section 366.26, subdivision (c)(1)(B)(v), provides that the court may determine that termination of parental rights would be detrimental to the child if “[t]here would be substantial interference with a child’s sibling relationship, taking into consideration the nature and extent of the relationship, including, but not limited to, whether the child was raised with a sibling in the same home, whether the child shared significant common experiences or has existing close and strong bonds with a sibling, and whether

ongoing contact is in the child's best interest, including the child's long-term emotional interest, as compared to the benefit of legal permanence through adoption." Courts have stated that "the application of this exception will be rare, particularly when the proceedings concern young children whose needs for a competent, caring and stable parent are paramount. [Citation.]" (*In re Valerie A.* (2007) 152 Cal.App.4th 987, 1014 (*Valerie A.*).

Father argues that a continuance is appropriate when the juvenile court needs time to obtain information required to make an informed decision on an important issue. He relies on *In re B.D.* (2008) 159 Cal.App.4th 1218 (*B.D.*) and *In re Salvador M.* (2005) 133 Cal.App.4th 1415 (*Salvador M.*), for the principle that "where there are tentative alternative plans for adoption and one plan may substantially interfere with the sibling relationship, the better approach is to continue the hearing until the uncertainty has been resolved. [Citation.]" (*B.D.*, *supra*, 159 Cal.App.4th at p. 1236.)

In *Salvador M.*, the child was placed with a maternal grandmother, who was the legal guardian of the child's older brother. The maternal grandmother wanted to adopt the child, but the adoptive home study was not completed by the time of the section 366.26 hearing. The social worker testified that she expected the home to be approved. The juvenile court found that it was in the child's best interests to continue the sibling relationship but further found that, if the maternal grandmother adopted the child, the sibling exception to adoption would not apply because he would continue to live with his older brother. The sibling exception would apply only if adoption by the grandmother fell through and the child was adopted by a different family.

Similar to Father here, the mother in *Salvador M.* argued that there was no guarantee the grandmother would adopt the child and that the juvenile court



improperly relied on speculative testimony that the grandmother's home study would be approved. On appeal, the court agreed that "the better procedure for the juvenile court to have followed where it concluded the sibling relationship exception to adoption would not apply if the grandmother adopted [the child] but would apply if someone else adopted the child would have been to continue the hearing until the grandmother's home study had been completed." (*Salvador M.*, *supra*, 133 Cal.App.4th at p. 1422.) However, the court relied on an addendum report indicating the grandmother's home had been approved to conclude that the mother's argument was moot. (*Ibid.*)

We decline to follow the suggestion in *Salvador M.* that "the better procedure" would have been for the juvenile court to continue the hearing. (*Salvador M.*, *supra*, 133 Cal.App.4th at p. 1422.) The statement is dicta and does not address the established standard that we should reverse a juvenile court's order denying a continuance only upon a showing of an abuse of discretion. (*V.V.*, *supra*, 188 Cal.App.4th at p. 399.) Even if we were to agree with the court's observation, unlike in *Salvador M.*, the juvenile court here did not find that the sibling exception would apply if Maribel's home study was not approved.

Father cites the comment of minors' counsel that the three children are "a bonded sibling group." However, this comment does not constitute evidence and certainly is not sufficient to meet Father's burden of establishing detriment sufficient to avoid termination of parental rights by a preponderance of the evidence. (*Valerie A.*, *supra*, 152 Cal.App.4th at p. 998.) Indeed, Father has presented no evidence that ongoing sibling contact is in Samantha's best interest "as compared to the benefit of legal permanence through adoption." (§ 366.26, subd. (c)(1)(B)(v).)

Essentially, Father’s contention is that the section 366.26 hearing should have been continued for the speculative reason that the sibling exception might apply. There is no evidence that the exception might apply. Furthermore, the application of the sibling exception is rare, “particularly when the proceedings concern young children whose needs for a competent, caring and stable parent are paramount.” (*Valerie A.*, 152 Cal.App.4th at p. 1014.) Samantha was placed with Gabriela and her husband in April 2012, when she was a little over a year old and had been with them continuously through the time of the section 366.26 hearing. There was no reason here “to further delay [Samantha’s] chance at stability and permanence in an adoptive home.” (*Salvador M.*, *supra*, 133 Cal.App.4th at p. 1422.) The juvenile court did not abuse its discretion in denying a continuance.

#### **DISPOSITION**

The order is affirmed.

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WILLHITE, J.

We concur:

EPSTEIN, P. J.

COLLINS, J.